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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 17 1997

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

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FCC 97-157

Federal-State Joint Board on

Universal Service

CC Docket No. 96-45

PETITION FOR CLARIFICATION AND RECONSIDERATION

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PETITION FOR CLARIFICATION AND RECONSIDERATION

Pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the National Exchange Carrier Association, Inc. (NECA)¹ hereby submits this Petition for Clarification and Reconsideration of the Commission's Universal Service Order, released May 7, 1997. This Petition requests clarification and/or reconsideration of certain critical timing and implementation matters that must be addressed immediately, in order to meet the Commission's planned January 1, 1998 date. NECA also seeks clarification of certain issues related to forecasts, true-ups and resizing of support mechanisms, and rules governing Long Term Support

¹ NECA is a not-for-profit association that is responsible, under the Commission's rules, for the preparation of access charge tariffs on behalf of over 1,200 telephone companies that do not file separate tariffs; and for the collection and distribution of access charge revenues. *See* 47 C.F.R. §§ 69.603 and 64.604. NECA also administers the interstate Universal Service and Lifeline Assistance programs and the interstate Telecommunications Relay Services (TRS) fund. *See id.* The Joint Board recommended, and the Commission appointed NECA interim Administrator of the new Universal Service programs. *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87 (1996) at ¶ 833 (Recommended Decision) and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 62 Fed. Reg. 32862 (1997) at ¶ 861 (Universal Service Order).

(LTS) and Dial Equipment Minute (DEM) calculations.² Finally, NECA urges the Commission to reconsider its decision to require the universal service (US) Administrator to appoint a subcontractor for schools and libraries.

I. THE COMMISSION MUST IMMEDIATELY CLARIFY CERTAIN TIMING AND IMPLEMENTATION ISSUES FOR THE NEW US MECHANISMS TO WORK AS INTENDED ON JANUARY 1, 1998.

The US Administrator is tasked with implementing the new Universal Service Fund (USF) in a timely manner in full compliance with Commission rules. There is an urgent need for Commission resolution of various issues relating to data submissions and filing dates. Absent these actions, the planned January 1, 1998 implementation date for the new US mechanisms may not be met.³

Under the 1996 Act and the Commission's new US rules, for example, only "eligible" telecommunications carriers are permitted to receive universal service support."⁴ State commissions must designate a carrier as eligible,⁵ and the Administrator must receive a copy of

² This Petition focuses on issues of immediate concern. Additional implementation issues are expected to arise as NECA assumes its duties as interim Administrator of the Commission's new US programs. NECA anticipates the need for close coordination with Commission staff and may file additional petitions for clarification as needed.

³ The Joint Board recommended, and the Commission adopted access rule changes to make current implicit support flows explicit on January 1, 1998, to revise the collection mechanism for the universal support funds on January 1, 1998, and to begin school, library, and rural health care programs effective that date. *See Recommended Decision* and *Universal Service Order*.

⁴ 47 C.F.R. § 54.201(a)(1).

⁵ 47 C.F.R. § 54.201(b).

such designation before it can disburse funds to that carrier.⁶ No indication is given, however, as to the timing of such designations, or actions that the Administrator should take in the event that current recipients of US support do not receive the necessary designations in time for the January 1, 1998 deadline. Carriers, state commissions, and the Administrator all need assurances that a workable timetable is in place for eligible carriers.⁷ Accordingly, the Commission must specify some mechanism for determining what carriers will be considered “eligible” prior to January 1, 1998.⁸

In the event that the Administrator will be required to calculate total support amounts for the universe of eligible carriers, specific dates for providing relevant information must be established. This step is essential if the fund requirements are to be properly sized for the ensuing funding period. For example, if the Administrator is required to identify funding requirements for the various programs, a mechanism for estimating support level requirements for each participant is required. This information must be obtained far enough in advance for the Administrator to review it for accuracy. If the Administrator is also required to file proposed

⁶ See Universal Service Order at ¶ 198.

⁷ Incumbent LECs, and NECA as tariff filing agent for its pool members, must have conformation of eligibility for support amounts well before the access tariff filing data for 1998 rate changes in order to reflect these changes in proposed access rates.

⁸ Whether or not support amounts for competitive local exchange carriers (CLECs) is to begin in 1998 is unclear. The rules specify that, for purposes of calculating US support, line counts as of December 31 of each year are to be reported to the Administrator on July 31 of the following year. Although NECA currently receives US fund data for incumbent LECs pursuant to the Commission’s existing Part 36 rules, no data for CLECs has been reported to NECA to date. If the Commission intends that CLECs designated as eligible carriers receive support in 1998, it should specify how line counts should be reported for such support. See 47 C.F.R. § 54.307(b).

contribution factors to be applied to carriers' retail revenues, such a filing would presumably need to be made far enough in advance of the January 1, 1998 effective date to allow interested parties a meaningful opportunity to comment.⁹ Incumbent local exchange carriers (ILECs) must know both their support amounts and new contribution obligations¹⁰ well in advance of the access tariff filing dates for rates to become effective January 1, 1998.

Finally, as many commenters pointed out in CC Docket No. 97-21, it is essential that the Commission act soon to authorize NECA to begin work as temporary Administrator of the Commission's new US mechanisms.¹¹ While NECA believes that it is still capable of making these new programs operational on schedule, less than six months remain until the scheduled implementation date. New US programs will involve many entities that are unfamiliar with US funding mechanisms and data reporting procedures. Development of workable administrative mechanisms will be a complex task, made even more difficult by short time frames for implementation. It is essential that the Commission act soon to direct NECA to establish the USAC subsidiary described in its January 10, 1997 Letter, specify parameters for USAC's

⁹ See 47 C.F.R. § 54.703.

¹⁰ These new contributions will be directly assigned to the interstate common line (CL) access element for rate of return ILECs. See Universal Service Order at ¶ 830 and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, *First Report and Order*, 62 Fed. Reg. 31868 (1997) at ¶ 378.

¹¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21, *Notice of Proposed Rulemaking and Notice of Inquiry*, 12 FCC Rcd 72 (1997)(NPRM).

governance, and specify cost recovery procedures.¹² By doing so quickly, the Commission can help assure successful and timely implementation of its new US programs.

II. THE COMMISSION SHOULD SPECIFY METHODS FOR CORRECTING DATA REPORTING AND FORECASTING ERRORS IN THE NEW US FUNDING MECHANISM.

Implementation of the new US programs will require the use of forecasts for estimating future funding requirements. For example, the rules appear to require the Administrator to rely on forecasts to develop 1998 LTS requirements, 1998 DEM Weighting requirements and portable per line support levels. These amounts are in addition to any USF expense adjustment and Lifeline Assistance requirements continuing for each eligible study area.

The Commission's new US rules require that 1998 LTS and portable per line support for each study area that participates in NECA's Common Line (CL) pool be calculated using 1997 data levels grown by the rate of growth of the National Average Cost per Loop between 1995 and 1996.¹³ However, final data for calculating 1997 LTS amounts will not be available until cost studies for 1997 are completed during calendar year 1998 -- well after the planned January 1, 1998 effective date of the new mechanism.¹⁴

¹² See NECA Comments to NPRM filed Jan. 27, 1997.

¹³ 47 C.F.R. § 54.303.

¹⁴ Due to the complexity of cost studies and the limited resources of small cost companies, final cost data is not available to NECA for at least seven to twelve months after the study period. NECA's pooling procedures, which have been in effect since the beginning of access charges, permit a period of up to twenty-four months after the data month for companies to recover "trued up" actual interstate costs from the CL and TS Pools. See National Exchange Carrier Association, Inc., Annual 1997 Access Tariff Filing, Transmittal No. 758, filed June 16, 1997, Vol. 1 § 4.

A similar situation is encountered when reporting 1998 DEM Weighting requirements and portable per line support levels for each study area that has fewer than 50,000 loops. The Commission rules require that these support levels are to be determined by using projections of 1998 Unseparated Local Switching revenue requirements and the difference between 1996 weighted and unweighted DEM factors.¹⁵ Actual 1996 weighted and unweighted DEM levels and 1998 local switching revenue requirements will also not be available to support a filing of contribution factors in the fall of 1997, or as the basis for support beginning January 1, 1998. Actual 1998 local switched revenue requirement will not be known until late in 1999, as cost studies are completed.¹⁶

As a result, both LTS and DEM Weighting calculations will require forecast data to determine the initial support amounts. In both situations, actual data will become available at a later date, which will likely reflect different results than those forecasted. Such differences logically necessitate subsequent true-ups for LTS, DEM, and portable per line support amounts.

The issue of forecast data subsequently true-up with actual results will also impact the Administrator's ability to properly size the funding requirement. As is the case with the current USF, Lifeline Assistance and Telecommunications Relay Service (TRS) mechanisms administered by NECA, the data underlying the funding requirement is either forecasted or subject to further true-up subsequent to the time that the funding requirement has been

¹⁵ 47 C.F.R. § 54.301.

¹⁶ See *supra* note 14.

established.¹⁷ To insure that the programs are neither over- nor under-funded, there is an ongoing need to adjust the future funding requirements for any changes to current or prior funding periods. Specific provisions governing true-ups and resizing mechanisms should be incorporated in Commission rules governing the new US funds.¹⁸

Clarification of rules governing the calculation of LTS and DEM revenue requirements also appears to be necessary. Specifically, new section 54.303 of the Commission's rules states that the total LTS amount in 1998 and 1999 will reflect the "annual percentage change in the actual nationwide average loop cost as filed by the fund administrator in the previous calendar year. . . ." ¹⁹ Although the reference to "average loop cost" appears to contemplate changes in the cost per loop, the rule could be read as referring only to changes in loop costs, not numbers of loops. The Commission should amend this rule to state that the LTS calculation should be based both on the percentage change in actual nationwide average loop costs and numbers of working loops for all eligible telecommunications service providers.²⁰

¹⁷ Reasons for these variances include quarterly updates in loop costs, differences between Lifeline Assistance and TRS forecast and actual amounts, interexchange carrier (IXC) uncollectibles, and errors or omissions that are detected and corrected.

¹⁸ The Order appears to contemplate that such adjustments will be necessary for the schools and libraries on a quarterly basis. *See* Universal Service Order at ¶ 532.

¹⁹ 47 C.F.R. § 54.303. *See also* Universal Service Order at ¶ 306.

²⁰ The Commission should also note that, by basing LTS on 1997 data, the effects of assigning new universal service contributions of incumbent LECs in the NECA pool to the interstate Common Line access element will result in a material increase (approximately 50%) in the pool CCL rate, absent an LTS adjustment to recognize the additional common line revenue requirements.

With respect to DEM weighting, as noted above, support amounts will be based in part on projections of “unseparated local switching revenue requirement.”²¹ The Commission’s rules do not, however, define any method for calculating such amounts (the current part 69 rules only define how to calculate *interstate* local switching revenue requirements). In order to assure that these calculations are made correctly, the Commission should develop specific rules governing the development of unseparated local switching revenue requirements from Part 32 accounts for purposes of determining DEM weighting support under the new US mechanism.

III. THE COMMISSION SHOULD NOT IMPOSE UNNECESSARY RESTRICTIONS ON THE MANNER IN WHICH THE ADMINISTRATOR CARRIES OUT ITS FUNCTIONS.

The Commission should reconsider its decision to require that the Administrator use a subcontractor for assistance with the schools and libraries programs.²² This requirement, if left in effect, will significantly interfere with the Administrator’s ability to perform its functions, and may compromise the integrity of the fund.

When the Commission established NECA as Administrator of its original access charge plan, it recognized the need to avoid becoming involved in management functions. In its Access Charge Order, for example, the Commission plainly stated that it would not be “necessary or

²¹ 47 C.F.R. § 54.301.

²² The Commission requires “the administrator, after receiving recommendations submitted by the Department of Education, to select a subcontractor to manage exclusively the application process for eligible schools and libraries, including dissemination and review of applications for service and maintenance of the website on which applications for service will be posted for competitive bidding by carriers.” Universal Service Order at ¶ 571. *See also* 47 C.F.R. §§ 54.504 and 54.507.

desirable for this Commission to prescribe the staffing arrangements the association would be required to adopt.” The Commission rejected the idea of adopting “rules that would restrict the association’s discretion in acquiring staff or borrowing staff from its members or contracting with accounting firms, banks or others to perform some of the association’s tasks.”²³

As interim Administrator, NECA will have responsibility for the successful implementation of the Commission’s new US programs. NECA must, however, be given flexibility to accomplish its responsibilities in the most effective and efficient manner possible. For example, it may be necessary for NECA to subcontract a number of functions in order to implement the Commission’s new US programs. But the decision on whether to use a subcontractor or hire employees directly should be left to the Administrator. Without this flexibility, NECA may find itself in a poor negotiating position, and may not be able to perform the functions expected of it.²⁴ It is essential, therefore, that the Commission reconsider its decision to require the Administrator to hire a subcontractor. The Commission should also revise its new US rules so as to delete references to the Administrator’s subcontractor. To the extent

²³ MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C. 2d 241 (1983). In 1987, the Commission reiterated this position. Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 2 FCC Rcd 381 (1987) at ¶ 25.

²⁴ Particular concerns arise with the initial implementation phase, when valuable time could be lost, and resources diverted, to a mandatory subcontracting process rather than the task directly at hand. Additional longer-term issues regarding the integrity and security of databases are likely to arise, particularly insofar as the rules require the subcontractor and the Administrator to share responsibility for managing the website and for maintaining fund databases. See 47 C.F.R. §§ 54.504 and 54.505.

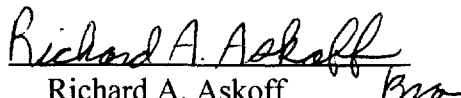
possible, the rules should describe what the tasks the Administrator is required to accomplish, but should not unnecessarily restrict the ways in which those responsibilities are carried out.

CONCLUSION

NECA requests the Commission act expeditiously to establish firm schedules for implementation of its new US programs, in order to assure a successful and smooth transition on January 1, 1998. Service-affecting problems could undermine the significant US accomplishments to date if programs are not fully coordinated at their inception. NECA's ability to assure rules compliance as discussed herein requires establishing immediate timetables for implementation activities. The Commission should also clarify methods for truing-up data and for resizing of funds. Finally, the Commission should reconsider its decision requiring the Administrator to perform some of its functions through a subcontractor. While it may be necessary for the Administrator to use agents or subcontractors to perform its functions, the decision as to whether to perform these functions directly or through agents should be left to the Administrator's discretion.

Respectfully submitted,

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July 17, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Reconsideration were served this 17th day of July, 1997, by mailing copies thereof by United States Mail, first class postage paid, or hand delivery, to the persons listed below.

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